

Seaman, Katherine

From: sjokeeffe@gmail.com on behalf of Stephanie O'Keeffe [stephanie@okeeffe.com]
Sent: Thursday, April 16, 2009 9:14 AM
To: Seaman, Katherine
Subject: Fwd: FW: KANAGASAKI - ROOM AND BOARD
Attachments: 20090403162609407.pdf

Kate --

Please include this e-mail and the attachment in the packet.

Thank you.

Stephanie

----- Forwarded message -----

From: Shaffer, Larry <ShafferL@amherstma.gov>
Date: Fri, Apr 3, 2009 at 4:46 PM
Subject: FW: KANAGASAKI - ROOM AND BOARD
To: Stephanie O'Keeffe <stephanie@okeeffe.com>, jbard@k-plaw.com

Stephanie,

It would appear that Select Board members, or appointed officials would be able to accept the room and board in Kanagasaki as long as two conditions are met;

1. The purpose of the trip must be for a "legitimate public purpose".
2. A disclosure needs to be filed with the town clerk
3. Spouses are not allowed to enjoy the benefit.

Finally, the letter from Attorney Riley will be filed with the State Ethics Commission who may concur with the opinion or disagree.

Talk to you soon.

Larry

-----Original Message-----

From: th-copier-mezzanine@amherstma.gov
[mailto:th-copier-mezzanine@amherstma.gov]
Sent: Friday, April 03, 2009 5:26 PM
To: Shaffer, Larry
Subject:

This E-mail was sent from "TH-COPIER-Mezzanine" (Aficio MP C4500).

Scan Date: 04.03.2009 16:26:09 (-0500)
Queries to: th-copier-mezzanine@amherstma.gov

4/17/2009



KOPELMAN AND PAIGE, P.C.
The Leader in Municipal Law

101 Arch Street
Boston, MA 02110
T: 617.558.0007
F: 617.654.1735
www.k-plaw.com

April 3, 2009

Brian W. Riley
briley@k-plaw.com

BY FACSIMILE - (413)259-2405

Mr. Laurence Shaffer
Town Manager
Amherst Town Hall
4 Boltwood Avenue
Amherst, MA 01002

Re: Potential Conflict of Interest Issues --
Complementary Travel Expenses in Kanegasaki, Japan

Dear Mr. Shaffer:

You requested an opinion as to whether Town officials may accept a gift of travel expenses (not including airfare) from the Town's sister city of Kanegasaki, Japan. According to the information provided, the Town and Kanegasaki have had a sister city relationship for many years, and there have been regular exchange student programs between the two municipalities. Kanegasaki government officials have offered to provide complementary lodging and meals to certain Amherst officials if they are able travel to Japan for a formal visit. These include the chairman of the Select Board, Town Manager, Director of the Senior Center and the volunteer chair of the Kanegasaki Sister City Committee, as well as their spouses. The purpose of the trip is to celebrate the sister city relationship and to foster fellowship and a cultural exchange between the municipalities. You have asked how the provisions of the Conflict of Interest Law are implicated by such a scenario. In my opinion, recent regulations promulgated by the State Ethics Commission will permit these Town officials to accept the travel expenses, provided that such travel constitutes a "legitimate public purpose" and the officials and employees comply with the requirements of 930 CMR 5.05.

The provisions of G.L. c.268A, §(3)(a) and (b) prohibit a municipal employee from receiving, and any person from giving, funds directly to such employee for or because of any official action. As a result, State Ethics Commission precedent prohibited municipal officials and employees from accepting monies from vendors or others for travel purposes. However, recognizing that there are times when business-related travel furthered public purposes, the Commission promulgated regulations as to how such travel may be accomplished. In 930 CMR 5.05, the State Ethics Commission provides:

KOPELMAN AND PAIGE, P.C.

Mr. Laurence Shaffer
Town Manager
April 3, 2009
Page 2

(1) **Free or Discounted Travel.** It shall not be a violation of M.G.L. c. 268A, § 3(a) for an individual to offer, or give, or a violation of M.G.L. c. 268A, § 3(b), § 23(b)(2) or § 23(b)(3) for a public employee to receive, free or discounted travel and lodging expenses, including meals, of substantial value that serve legitimate public purposes provided that:

(a) **Disclosure.** A public employee, prior to any travel, shall file a full disclosure in writing of the travel and the expenses to be covered.

(b) **Appointed Public Employee.** An appointed public employee, prior to any travel, shall file a full disclosure as required by 930 CMR 5.05(I)(a) with his or her appointing authority. The appointing authority shall make an advance determination, which shall be filed in the same manner as a disclosure, that the travel serves a legitimate public purpose and that the benefit to the government of the employee's participation in the travel or event outweighs any non-work related benefit to the employee or the private sponsor taking into account the extent to which such free or discounted travel may convey an appearance of special benefit for any employee.

(c) **Elected Public Employees.** ... An elected municipal employee, prior to any travel, shall file a full disclosure as required by 930 CMR 5.05(I)(a) with the city or town clerk in the respective municipality. Such disclosure shall state that the travel serves a legitimate public purpose and that the benefit to the government of the elected public employee's participation in the travel or event outweighs any non-work related benefit to the employee or the private sponsor taking into account the extent to which such free or discounted travel may convey an appearance of special benefit for the elected public employee.

(d) **Reconciliation Statement.** If the actual travel for the event differs from the original proposal by an amount of substantial value, within two weeks of his return, the public employee shall submit a statement of reconciliation stating how and why the actual travel for the event differed from the original proposal. Reconciliation statements shall be filed in the same manner as disclosures.

In summary, the complementary travel accommodations may be accepted in accordance with the above regulations, provided that the travel is for a "legitimate public purpose." This term is defined in 930 CMR 5.03 as follows:

KOPELMAN AND PAIGE, P.C.

Mr. Laurence Shaffer
Town Manager
April 3, 2009
Page 3

the promotion of tourism, economic development and other activities to promote the interests of the Commonwealth, a county, or a municipality; attendance at training and educational events designed to improve the efficiencies and effectiveness of public services or to enhance the knowledge and skills of public employees relative to their official duties; business travel necessary to make informed purchasing decisions, selections, and inspections; and similar public purposes.

Thus, in my opinion, provided that the proposed trip to Japan constitutes a "legitimate public purpose," appointed officials and employees will need to file a disclosure with their appointing authority regarding the travel to be undertaken and the costs associated therewith, and their appointing authority will need to make a determination as to whether the described travel and expenses "serves a legitimate public purpose" and further that "the benefit to the government of the employee's participation in the travel or event outweighs any non-work related benefit to the employee or the private sponsor taking into account the extent to which such free or discounted travel may convey an appearance of special benefit for any employee." An elected official may qualify under the regulations by filing a similar written disclosure. In my opinion, this trip as the invitation of the City of Kanegasaki, based on the longtime sister city relationship, may qualify as a "legitimate public purpose" in support of the civic interests of the Town.

In the event that officials may wish to bring their spouses on the trip (who have been offered the same complementary lodging and meals), it is possible that a spouse's acceptance of such a complementary offer may implicate the prohibitions of G.L. c.268A, §23(b)(2). That section of the Conflict of Interest Law provides that no municipal employee may "use or attempt to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals." In one actual situation, when analyzing whether a state legislator's spouse could accept free or discounted travel, the State Ethics Commission indicated that free or discounted travel for a spouse or guest is generally prohibited, unless it is offered "pursuant to an industry-wide practice." EC-COI-117-4. In discussing that issue, the State Ethics Commission stated, "ABC also expects that any spouse who attends an event under a promotional ticket will actively participate in the events and will engage in professional activities on behalf of the region. ABC offered a promotional ticket for your spouse because it determined that the events which you would be attending and hosting required you to be accompanied by your spouse as a matter of social custom in those areas." *Id.* While the "industry-wide practice" standard may not apply to this trip, if a spouse's attendance at the events planned in Japan would, as a matter of social custom, be expected, his or her acceptance of the free travel expenses would not result in the Town official committing a violation of G.L. c.268A, §23(b)(2). This analysis applies to the facts provided, in my opinion. While the acceptance of complementary travel expenses generally raises concerns under G.L. c.268A, §§3 and 23(b)(2), in my opinion, the

KOPELMAN AND PAIGE, P.C.

Mr. Laurence Shaffer
Town Manager
April 3, 2009
Page 4

Town officials and their spouses may accept the complementary lodging and meals from the City of Kanegasaki, subject to the State Ethics Commission's approval of this opinion.

In accordance with G.L. c.268A, §22 and 930 CMR 1.03(3), I am required to file copies of this opinion with the Town Clerk and the State Ethics Commission. The Commission will then have thirty days in which to issue its own determination, either concurring or disagreeing with this opinion. If you have further questions in this regard, please feel free to contact me.

Very truly yours,



Brian W. Riley

BWR/bp

cc: Town Clerk
State Ethics Commission
370275/AMHR/9999